

DOCKET NO.: CV-13-5009138-S

SAMIR ZAKY

v.

BRIANNA MARCINIAK, ET AL.

) SUPERIOR COURT
) JUDICIAL DISTRICT OF
) DANBURY
)
) SEPTEMBER 6, 2017

MEMORANDUM OF DECISION

Procedural and Factual Background

The plaintiff, Samir Zaky, commenced this action in March 2013, against the defendants, Briana Marciniak¹ and Matthew Marciniak (the Marciniaks), Alan Harrison and Candace G. Harrison (the Harrisons), and the Town of Brookfield² claiming, inter alia, that he suffered significant damage to real property, which he owns, located at 1 High Ridge Road, Brookfield, caused by excessive surface water runoff from the Marciniaks' and the Harrisons' property. On August 8, 2013, the Marciniaks and the Harrisons filed seven counterclaims (#173) against the plaintiff alleging causes of action for interference with an easement, nuisance, intentional infliction of emotional distress, interference with lawful drainage from property and illegal repelling of water, and trespass. On November 13, 2013, the plaintiff was nonsuited (#179.05) for his failure to file a revised complaint. On October 3, 2016, a default (#183.05) entered against the plaintiff for his failure to plead in response to the Marciniaks' and the Harrisons' counterclaims. In addition, the court entered a default (#188) against the plaintiff for his failure to attend a status conference in this matter scheduled for July 20, 2017. The court then scheduled this matter for a hearing in damages on August 4, 2017. Matthew Marciniak and Alan Harrison appeared at the hearing in damages and were heard. The plaintiff did not appear at the hearing in damages.

Entry of a default against a party does not lead directly to a judgment in favor of the other party. "In an action at law, the rule is that the entry of a default operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint which are essential to entitle the plaintiff to some of the relief prayed. It is not the equivalent of an admission of all of the facts pleaded. The limit of its effect

¹ The summons lists her as Brianna Marciniack; however, the correct spelling of her name is Briana Marciniack. The co-defendant's, Matthew Marciniak's, surname is also misspelled in the summons.

² The present hearing in damages is limited to the counterclaims filed by the Marciniaks and the Harrisons.

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Tinkley Rehehan
G. Cava, Esq.
Requier Taylor JWS 9/6/17

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is to preclude the defaulted defendant from making any further defense and to permit entry of a judgment against him on the theory that he has admitted such of the facts alleged in the complaint as are essential to such a judgment. It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive.” (Internal quotation marks omitted.) *Bank of New York v. National Funding*, 97 Conn. App. 133, 139, 902 A.2d 1073, cert. denied, 280 Conn. 925, 908 A.2d 1087 (2006), cert. denied, 549 U.S. 1265, 127 S. Ct. 1493, 167 L. Ed. 2d 229 (2007).

Findings

Having heard the evidence presented by the Marciniaks and the Harrisons, and taking as admitted certain allegations in their counterclaims, the court makes the following findings:

(1) Prior to 2004, the Harrisons were the owners of the real estate shown and delineated as lots 1, 2, and 3 on file in the Brookfield Town Clerk’s Office as map number 884 (the map). In February 2006, the Harrisons sold lot 1³ to the Marciniaks. At the time of the purchase, the Marciniaks granted to the Harrisons a purchase money mortgage on the premises.

(2) In June 2006, the Harrisons conveyed their interest in adjacent lots 2 and 3⁴ on the map to the plaintiff. Later that same year, the plaintiff transferred his entire interest in lots 2 and 3 by quitclaim deed to Affiliated Realty, LLC. In January 2013, Affiliated Realty, LLC conveyed a 99.9 percent interest in lots 2 and 3 to Affiliated Real Estate, LLC, a Connecticut limited liability company, and a “one tenth percent interest” in lots 2 and 3 to the plaintiff.

(3) Lots 2 and 3 exist at a slightly lower elevation from lot 1, and are subject to easement rights in favor of the owners of lot 1 and their successors and assigns. In particular, lots 2 and 3 are traversed by an eighteen inch reinforced concrete underground pipe which provides drainage for lot 1. The pipe extends from a head wall on lot 1, as shown on the map, to a catch basin on lot 2, and then across lot 2 to a catch basin under High Ridge Road.

(4) An intermittent watercourse exists on lot 1 which naturally flows onto lot 2. This intermittent

³ Lot 1 is also commonly known as 22 Beach Road, Brookfield.

⁴ Lots 2 and 3 are also commonly known as 1 High Ridge Road, Brookfield.

watercourse drains into a second catch basin located on lot 2, and then through a twelve inch reinforced concrete pipe under lots 2 and 3 to High Ridge Road. Together, the twelve inch and eighteen inch pipe structures effectively carry runoff water from the higher elevation of lot 1, under lots 2 and 3, to catch basins on High Ridge Road.

(5) These drainage structures, which were built prior to the subdivision of the Harrisons' property into lots 1, 2, and 3, are shown on the map. The deed from the Harrisons to the plaintiff expressly states that title to lots 2 and 3 are conveyed by the grantors subject to notes and conditions as shown on the map. Incorporating the map into the deed to the plaintiff encumbers lots 2 and 3 with an equitable servitude relating to drainage rights for the benefit of lot 1.⁵

(6) In April 2012, the plaintiff constructed a brick and concrete wall at the catch basin for the eighteen inch reinforced concrete pipe which completely blocked the flow of water through the pipe and caused flooding on lot 1 to a depth of several feet in some places.

(7) The plaintiff's action in blocking the eighteen inch pipe was illegal in that it was in derogation of the Marciniaks' drainage rights. The blockage also violated the Town of Brookfield's Inland Wetland Regulations in that it was located within seventy-five feet of a wetland or watercourse and was constructed without a permit.

(8) Commencing in 2010, the plaintiff began removing the semi-impervious paving stones, which served as the decking around the pool area, and replaced them with a much larger water-impervious concrete pad which extended nearly to lot 1's property line. At this time, the plaintiff also constructed a concrete block wall at the southerly end of the pool and concrete deck.

(9) In 2012, the plaintiff caused additional fill to be placed between the pool area and lot 1's property

⁵ General Statutes § 7-31 provides in relevant part: "When any person having an interest in land has caused it to be surveyed and plotted or laid out into lots and projected highways, and a map made, which map shall bear the seal of the surveyor and a certification that it is substantially correct to the degree of accuracy shown thereon . . . the map may be received and placed on file in the office of the clerk of the town in which such land is situated and shall thereupon be deemed a part of the deeds referring thereto, and may be produced in court accordingly . . ." It is settled law that when the language of a deed makes reference to a map for a more particular description of the land being conveyed, the map is incorporated as if fully and effectively copied therein. E.g., *Chebro v. Audette*, 138 Conn. App. 278, 283, 50 A.3d 978 (2012); *Hirsch v. Tolonen*, 48 Conn. App. 445, 448, 711 A.2d 731, cert. denied, 245 Conn. 905, 718 A.2d 13 (1998).

line which raised the elevation grade of lots 2 and 3, and changed and increased the natural flow of surface runoff from lots 2 and 3 onto lot 1.

(10) The plaintiff also constructed a trench filled with reinforced concrete along lot 1's property line, which resulted in further flooding and damage to the Marciniaks' property. This action also violated the Inland Wetland Regulations of the Town of Brookfield in that it was located within seventy-five feet of a wetland or watercourse and was constructed without a permit.

(11) The plaintiff installed spotlights on the garage located on lots 2 and 3, and caused them to shine continuously into the living quarters of the home on lot 1.

(12) The flooding and other illegal actions by the plaintiff:

(a) Contaminated lot 1's domestic water supply by overwhelming the ability of the well's sump pump to keep the well clear of surface runoff;

(b) Damaged the foundation of the house on lot 1 by, inter alia, flooding its crawl space and causing mold conditions to develop;

(c) Flooded the septic system on lot 1 and caused a danger to public health by the release of septic effluent onto the surface of lot 1; and

(d) Created other imminent threats to lot 1's occupants' health and safety, including life-threatening risks of drowning to the Marciniaks' children.

(13) The plaintiff's actions violated the Marciniaks' and the Harrisons' rights of use and quiet enjoyment of their easement rights over lots 2 and 3 by: (a) blocking the eighteen inch pipe; (b) installing the trench along the property line; and (c) installing a water-impermeable surface around the pool area and raising the elevation of the land between pool area and lot 1's property line.

(14) The plaintiff's actions created a serious private nuisance to lot 1's owners and occupants by: (a) blocking the eighteen inch pipe; (b) installing the trench along the property line; and (c) installing a water-impermeable surface around the pool area and raising the elevation of the land between pool area and lot 1's property line.

(15) The plaintiff's actions caused an unlawful trespass onto the Marciniaks' property by: (a) blocking the eighteen inch pipe; (b) installing the trench along the property line; and (c) installing a water-impermeable surface around the pool area and raising the elevation of the land between the pool area and

lot 1's property line.

(16) The plaintiff's actions were intentional, malicious, outrageous, and were intended to cause extreme emotional distress to the Marciniaks and the Harrisons over a prolonged period of time by: (a) blocking the eighteen inch pipe; (b) installing the trench along the property line; (c) installing a water-impermeable surface around the pool area and raising the elevation of the land between the pool area and lot 1's property line; and (d) installing a spotlight designed to shine continuously into lot 1's occupants' living quarters.

(17) The court further finds that these actions did cause the Marciniaks and the Harrisons to suffer severe emotional distress over a long period of time.

(18) The Marciniaks and the Harrisons incurred (or will incur) the following costs as a direct and proximate result of the plaintiff's actions:

(A) Construction of fence to stop encroachment	\$ 4,029.02
(B) Replacement of removed boulders marking property line	880.00
(C) Surveyor engaged to replace removed surveyor's markers	1,080.00
(D) Installation of wire fence to stop encroachment	1,022.50
(E) Surveillance cameras, related equipment, and installation	2,763.56
(F) Burned out sump pump replacement	123.12
(G) Digging of swale to twelve inch pipe to relieve flooding	880.00
(H) Replacement water and water tests	1,053.66
(I) Removal of trees undermined by flooding	3,090.00
(J) Additional out-of-pocket expenses	
Town of Brookfield ZBA Appeal Fees	\$ 720.00
Copies	33.00
Town of Brookfield Copy Charges	40.00
Additional Miscellaneous Fees and Costs	<u>200.00</u>
	993.00
(K) Estimate to remove and replace broken stockade fence	13,817.78
(L) Estimate to remove concrete trench	6,593.70
(M) Estimate to remove and replace broken crawl space components	<u>59,371.00</u>
Subtotal of out-of-pocket and future estimated costs	\$95,697.34

(N) Reasonable Legal Fees (awarded as punitive damages)	113,150.00
(O) Statutory damages for obstruction of watercourse	546.00
(P) Compensatory damages for intentional infliction of emotional distress	50,000.00
Total Damages	\$259,393.34

Judgment

Judgment enters in favor of the Marciniaks and the Harrisons against the plaintiff as follows:

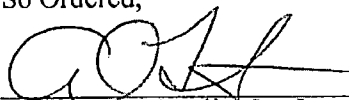
1. As to the first, sixth, and seventh counts of the counterclaim, quieting title in favor of the Marciniaks as owners and the Harrisons as mortgagees of lot 1 and to their heirs, administrators, successors, and assigns, in and to the easement and drainage rights through the natural swales, watercourses, and topography of lots 1, 2, and 3 as shown on the map, including those leading to the twelve inch and eighteen inch pipes as also shown on the map.

2. As to the first, sixth, and seventh counts of the counterclaim, a permanent prohibitory injunction enters and is ordered against the plaintiff, who is prohibited from placing any obstructions, fill, or other impediments to the natural flow of water in its natural channels and courses and/or through the existing drainage structures as shown on the map, and as the same may be rebuilt and maintained from lot 1 to, through, onto, and over lots 2 and 3.

3. As to the first, sixth, and seventh counts of the counterclaim, a permanent mandatory injunction enters and is ordered against the plaintiff, ordering him to remove existing fill and impediments to the free flow of surface and subsurface water in its natural channels over lot 1 including, but not limited to, removal of the reinforced concrete filled trench, and to restore said land to its condition prior to the placement of said impediments and the digging of said trench; and, if the plaintiff fails to do so, the Marciniaks and the Harrisons may enter upon lots 2 and 3 and do so.

4. As to the second, third, fourth, fifth, and seventh counts of the counterclaim, it is adjudged that the Marciniaks and the Harrisons recover from the plaintiff compensatory and punitive damages of \$259,393.34, plus the costs of this action of \$6,836.23, for a total judgment of \$266,229.57.

So Ordered,



Anthony D. Truglia, Jr., J.